

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED

SENATE BILL NO. 23

(By Mr. Jackson, Mr. President,
and Mr. Gurnie)

PASSED March 3, 1969

In Effect July 1, 1969 - Passage

FILED IN THE OFFICE
JONAS D. DOORFELLED, IV
SECRETARY OF STATE
THIS DATE 3-17-69

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Senate Bill No. 23

(By MR. JACKSON, MR. PRESIDENT, and MR. GAINER)

[Passed March 3, 1969; in effect July 1, 1969.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen and twenty-two, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections three-a, eight-b, eleven-a and twelve-a, all relating generally to water resources, the water pollution control act, and law enforcement, and more particularly to the definitions of the terms, the general powers and duties of the chief of the division of water resources and the water resources board with respect to

water pollution, cooperation with other governments and agencies, requirements for permits for specified activities, making pollution unlawful and declaring it to be a public nuisance, establishment of water quality standards, application for permits, permit fees, procedures concerning permits, providing for the appointment of a responsible agent as attorney in fact for holders of permits, the transfer of permits, orders to compel compliance with permits, information to be filed, orders of the chief to stop or prevent discharges or deposits, orders of the chief to take remedial action, service or orders, providing for discretion of chief to withhold issuance of order, duty to proceed with remedial action upon receipt of permit, emergency orders, progress reports, compliance with remedial orders, continuing jurisdiction, finances and funds, appeals to and review procedures before the water resources board, circuit courts and the supreme court of appeals, actions to abate nuisances, injunctive relief, violations and criminal penalties, the preservation of certain rights and remedies, and that said article five-a is for the benefit of the state only.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen and twenty-two, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections three-a, eight-b, eleven-a and twelve-a, all to read as follows:

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

§20-5A-2. Definitions.

1 Unless the context in which used clearly requires a

2 different meaning, as used in this article:

3 (a) "Director" shall mean the director of the depart-
4 ment of natural resources;

5 (b) "Board" shall mean the state water resources board;

6 (c) "Chief" shall mean the chief of the division of
7 water resources of the department of natural resources;

8 (d) "Person," "persons" or "applicant" shall mean any
9 public or private corporation, institution, association, firm
10 or company organized or existing under the laws of this

11 or any other state or country; state of West Virginia;
12 governmental agency; political subdivision; county court;
13 municipal corporation; industry; sanitary district; public
14 service district; drainage district; soil conservation dis-
15 trict; watershed improvement district; partnership; trust;
16 estate; person or individual; group of persons or in-
17 dividuals acting individually or as a group; or any other
18 legal entity whatever;

19 (e) "Water resources," "water" or "waters" shall mean
20 any and all water on or beneath the surface of the
21 ground, whether percolating, standing, diffused or flow-
22 ing, wholly or partially within this state, or bordering
23 this state and within its jurisdiction, and shall include,
24 without limiting the generality of the foregoing, natural
25 or artificial lakes, rivers, streams, creeks, branches, brooks,
26 ponds (except farm ponds, industrial settling basins and
27 ponds and water treatment facilities) impounding reser-
28 voirs, springs, wells and watercourses;

29 (f) "Pollution" shall mean (1) the discharge, release, es-
30 cape, deposit or disposition, directly or indirectly, of treat-
31 ed or untreated sewage, industrial wastes, or other wastes,

32 of whatever kind or character, in or near any waters of the
33 state, in such condition, manner or quantity, as does, will,
34 or is likely to (A) contaminate or substantially contribute
35 to the contamination of any of such waters, or (B) alter or
36 substantially contribute to the alteration of the physical,
37 chemical or biological properties of any of such waters, if
38 such contamination or alteration, or the resulting contami-
39 nation or alteration where a person only contributes there-
40 to, is to such an extent as to make any of such waters (i)
41 directly or indirectly harmful, detrimental or injurious to
42 the public health, safety and welfare, or (ii) directly or in-
43 directly detrimental to existing animal, bird, fish, aquatic
44 or plant life, or (iii) unsuitable for present or future do-
45 mestic, commercial, industrial, agricultural, recreational,
46 scenic or other legitimate uses; and shall also mean (2) the
47 discharge, release, escape, deposit, or disposition, directly
48 or indirectly of treated or untreated sewage, industrial
49 wastes or other wastes, of whatever kind or character, in
50 or near any waters of the state in such condition, manner
51 or quantity, as does, will, or is likely to reduce the quality
52 of the waters of the state below the standards established
53 therefor in the rules and regulations of the board;

54 (g) "Sewage" shall mean water-carried human or
55 animal wastes from residences, buildings, industrial
56 establishments or other places together with such ground
57 water infiltration and surface waters as may be present;

58 (h) "Industrial wastes" shall mean any liquid, gaseous,
59 solid or other waste substance, or a combination thereof,
60 resulting from or incidental to any process of industry,
61 manufacturing, trade or business, or from or incidental to
62 the development, processing or recovery of any natural
63 resources; and the admixture with such industrial wastes
64 of sewage or other wastes, as hereinafter defined, shall
65 also be considered "industrial wastes" within the meaning
66 of this article;

67 (i) "Other wastes" shall mean garbage, refuse, de-
68 cayed wood, sawdust, shavings, bark and other wood
69 debris and residues, sand, lime, cinders, ashes, offal, night
70 soil, silt, oil, tar, dyestuffs, acids, chemicals, and all other
71 materials and substances not sewage or industrial wastes
72 which may cause or might reasonably be expected to
73 cause or to contribute to the pollution of any of the
74 waters of the state;

75 (j) "Establishment" shall mean an industrial establish-
76 ment, mill, factory, tannery, paper or pulp mill, mine, col-
77 liery, breaker or mineral processing operation, quarry, re-
78 finery, well, and each and every industry or plant or
79 works or activity in the operation or process of which
80 industrial wastes, or other wastes are produced;

81 (k) "Sewer system" shall mean pipelines or conduits,
82 pumping stations, force mains and all other constructions,
83 facilities, devices and appliances appurtenant thereto,
84 used for collecting or conducting sewage, industrial
85 wastes or other wastes to a point of disposal or treat-
86 ment;

87 (l) "Treatment works" shall mean any plant, facility,
88 means, system, disposal field, lagoon, pumping station,
89 constructed drainage ditch or surface water intercepting
90 ditch, diversion ditch above or below the surface of the
91 ground, settling tank or pond, earthen pit, incinerator,
92 area devoted to sanitary landfills, or other works not
93 specifically mentioned herein, installed for the purpose
94 of treating, neutralizing, stabilizing, holding or disposing
95 of sewage, industrial wastes or other wastes or for the

96 purpose of regulating or controlling the quality and rate
97 of flow thereof;

98 (m) "Disposal system" shall mean a system for treat-
99 ing or disposing of sewage, industrial wastes, or other
100 wastes, or the effluent therefrom, either by surface or
101 underground methods, and shall be construed to include
102 sewer systems, the use of subterranean spaces, treatment
103 works, disposal wells and other systems;

104 (n) "Outlet" shall mean the terminus of a sewer system
105 or the point of emergence of any water-carried sewage,
106 industrial wastes, or other wastes, or the effluent there-
107 from, into any of the waters of this state;

108 (o) "Activity" or "activities" shall mean any activity or
109 activities for which a permit is required by the provisions
110 of section five of this article;

111 (p) "Disposal well" shall mean any well drilled or used
112 for the injection or disposal of treated or untreated sew-
113 age, industrial wastes or other wastes into underground
114 strata;

115 (q) "Well" shall mean any shaft or hole sunk, drilled,
116 bored or dug into the earth or into underground strata

117 for the extraction or injection or placement of any liquid
118 or gas, or any shaft or hole sunk or used in conjunction
119 with such extraction or injection or placement. The term
120 "well" shall not have included within its meaning any
121 shaft or hole sunk, drilled, bored or dug into the earth
122 for the sole purpose of core drilling or pumping or ex-
123 tracting therefrom potable, fresh or usable water for
124 household, domestic, industrial, agricultural or public use;
125 and

126 (r) "Code" shall mean the code of West Virginia, one
127 thousand nine hundred thirty-one, as amended.

**§20-5A-3. General powers and duties of chief of division and
board with respect to pollution.**

1 (a) In addition to all other powers and duties of the
2 chief of the department's division of water resources, as
3 prescribed in this article or elsewhere by law, the chief,
4 under the supervision of the director, shall have and may
5 exercise the following powers and authority and shall
6 perform the following duties:

7 (1) To encourage voluntary cooperation by all per-
8 sons in controlling and reducing the pollution of the

9 waters of this state, and to advise, consult and cooperate
10 with all persons, all agencies of this state, the federal
11 government or other states, and with interstate agencies
12 in the furtherance of the purposes of this article, and
13 to this end and for the purpose of studies, scientific or
14 other investigations, research, experiments and demon-
15 strations pertaining thereto, the department may receive
16 moneys from such agencies, officers and persons on behalf
17 of the state. The department shall pay all moneys so
18 received into a special fund hereby created in the state
19 treasury, which fund shall be expended under the direc-
20 tion of the chief solely for the purpose or purposes for
21 which the grant, gift or contribution shall have been
22 made;

23 (2) To encourage the formulation and execution of
24 plans by cooperative groups or associations of municipal
25 corporations, industries, and other users of waters of
26 the state, who, jointly or severally, are or may be the
27 source of pollution of such waters, for the control and
28 reduction of pollution;

29 (3) To encourage, participate in, or conduct or cause
30 to be conducted studies, scientific or other investigations,
31 research, experiments and demonstrations relating to
32 water pollution, and the causes, control and reduction
33 thereof, and to collect data with respect thereto, all as
34 may be deemed advisable and necessary to carry out
35 the purposes of this article;

36 (4) To study and investigate all problems concerning
37 water flow, water pollution and the control and re-
38 duction of pollution of the waters of the state, and to
39 make reports and recommendations with respect thereto;

40 (5) To collect and disseminate information relating
41 to water pollution and the control and reduction thereof;

42 (6) To develop a public education and promotion
43 program to aid and assist in publicizing the need of
44 and securing support for pollution control and abate-
45 ment;

46 (7) To sample ground and surface water with suffi-
47 cient frequency to ascertain the standards of purity or
48 quality from time to time of the waters of the state;

49 (8) To develop programs for the control and re-
50 duction of the pollution of the waters of the state;

51 (9) To exercise general supervision over the admin-
52 istration and enforcement of the provisions of this article,
53 and all rules, regulations, permits and orders issued
54 pursuant to the provisions of this article;

55 (10) In cooperation with the college of engineering
56 at West Virginia University, to conduct studies, scien-
57 tific or other investigations, research, experiments and
58 demonstrations in an effort to discover economical and
59 practical methods for the elimination, disposal, control and
60 treatment of sewage, industrial wastes, and other wastes,
61 and the control and reduction of water pollution, and
62 to this end, the chief may cooperate with any public or
63 private agency and receive therefrom, on behalf of the
64 state, and for deposit in the state treasury, any moneys
65 which such agency may contribute as its part of the
66 expenses thereof, and all gifts, donations or contribu-
67 tions received as aforesaid shall be expended by the
68 chief according to the requirements or directions of the
69 donor or contributor without the necessity of an appro-
70 priation therefor, except that an accounting thereof shall
71 be made in the fiscal reports of the department;

72 (11) To require the prior submission of plans, speci-
73 fications, and other data relative to, and to inspect the
74 construction and operation of, any activity or activities
75 in connection with the issuance and revocation of such
76 permits as are required by this article, or as he deems
77 necessary to carry out the provisions of this article or
78 to carry out the rules and regulations adopted pursuant
79 to the provisions of this article; and

80 (12) To require any and all persons directly or in-
81 directly discharging, depositing or disposing of treated
82 or untreated sewage, industrial wastes, or other wastes,
83 or the effluent therefrom, into or near any waters of
84 the state or into any underground strata, and any and
85 all persons operating an establishment which produces
86 or which may produce or from which escapes, releases
87 or emanates or may escape, release or emanate treated
88 or untreated sewage, industrial wastes or other wastes
89 or the effluent therefrom, into or near any waters of
90 the state or into any underground strata, to file with
91 the division of water resources such information as the
92 chief may require in a form or manner prescribed by

93 him for such purpose, including, but not limited to,
94 data as to the kind, characteristics, amount and rate
95 of flow of any such discharge, deposit, escape, release
96 or disposition.

97 (b) In addition to all other powers and duties of
98 the water resources board, as prescribed in this article
99 or elsewhere by law, the board shall have and may
100 exercise the following powers and authority and shall
101 perform the following duties:

102 (1) To cooperate with any interstate agencies for
103 the purpose of formulating, for submission to the Legis-
104 lature, interstate compacts and agreements relating to
105 the control and reduction of water pollution; and

106 (2) To adopt, modify, repeal and enforce rules and
107 regulations, in accordance with the provisions of chapter
108 twenty-nine-a of this code, (A) implementing and mak-
109 ing effective the declaration of policy contained in section
110 one of this article and the powers, duties and responsi-
111 bilities vested in the board and the chief by the provisions
112 of this article and otherwise by law; (B) preventing,
113 controlling and abating pollution; and (C) establishing

114 standards of quality for the waters of the state under
115 such conditions as the board may prescribe for the pre-
116 vention, control and abatement of pollution.

117 (c) The board is hereby authorized to hire one or
118 more individuals to serve as hearing examiners on a
119 full or part-time basis. Such individuals may be at-
120 torneys at law admitted to practice before any circuit
121 court of this state. All such hearing examiners shall be
122 individuals authorized to take depositions under the
123 laws of this state.

124 (d) The board, or any member thereof, and the chief,
125 and their duly authorized representatives, shall have
126 the power and authority to make investigations, inspec-
127 tions and inquiries concerning compliance with the pro-
128 visions of this article, or any order made and entered
129 in accordance with the provisions of this article, or any
130 rule or regulation promulgated by the board, or with
131 the terms and conditions of any permit issued in accord-
132 ance with the provisions of section seven of this article.
133 In order to make such investigations, inspections and
134 inquiries, the board, or any member thereof, and the

135 chief, and their duly authorized representatives, shall
136 have the power and authority to enter at all reasonable
137 times upon any private or public property, subject to
138 responsibility for their own safety and for any damage
139 to the property entered. All persons shall cooperate
140 fully with the person entering such property for such
141 purposes. Upon refusal of the person owning or con-
142 trolling such property to permit such entrance or the
143 making of such inspections, investigations and inquiries,
144 the board or any member thereof or the chief may apply
145 to the circuit court of the county in which such prop-
146 erty is located, or to the judge thereof in vacation, for
147 an order authorizing such entrance and the making of
148 such inspections, investigations and inquiries; and juris-
149 diction is hereby conferred upon such court or judge to
150 enter such order upon a showing that the relief asked
151 is necessary for the proper enforcement of this article.
152 A dwelling occupied for residential purposes shall not
153 be entered without a search warrant.

154 (e) The board is hereby authorized and empowered
155 to investigate and ascertain the need and factual bases for

156 the establishment of public service districts as a means
157 of controlling and reducing pollution from unincorporated
158 communities and areas of the state, and to present re-
159 ports and recommendations thereon to the county courts
160 of the areas concerned, together with a request that such
161 county courts create a public service district or dis-
162 tricts, as therein shown to be needed and required and
163 as provided in article thirteen-a, chapter sixteen of this
164 code. In the event a county court shall fail to act to
165 establish a county-wide public service district, the board
166 shall act jointly with the state director of health, the
167 director of the department of natural resources and the
168 chief of the division of water resources to order the
169 county court to take action to establish such public serv-
170 ice district or districts as may be necessary to control, re-
171 duce or abate the pollution, and when so ordered the
172 county court members must act to establish such a county-
173 wide public service district.

§20-5A-3a. Standards of water quality.

- 1 (a) In order to carry out the purposes of this article,
- 2 the board may promulgate rules and regulations setting

3 standards of water quality to be applicable to the waters
4 of this state, which standards of quality shall be such
5 as to protect the public health and welfare, wildlife, fish
6 and aquatic life, and the present and prospective future
7 uses of such waters for domestic, agricultural, industrial,
8 recreational, scenic and other legitimate beneficial uses
9 thereof.

10 (b) In establishing, amending, revising or repealing
11 rules and regulations relating to water quality standards,
12 the board shall follow all relevant procedures provided
13 by article three, chapter twenty-nine-a of the code.

14 (c) All persons affected by rules and regulations
15 establishing water quality standards shall promptly com-
16 ply therewith: *Provided*, That where necessary and
17 proper, the chief may specify a reasonable time for per-
18 sons not complying with such standards to comply with
19 such standards, and upon the expiration of any such
20 period of time, the chief shall revoke or modify any per-
21 mit previously issued which authorized the discharge of
22 treated or untreated sewage, industrial wastes or other
23 wastes into the waters of this state which result in reduc-

24 tion of the quality of such waters below the standards
25 established therefor by rules and regulations of the board.

§20-5A-4. Cooperation with other governments and agencies.

1 The division of water resources is hereby designated as
2 the water pollution control agency for this state for all
3 purposes of federal legislation and is hereby authorized to
4 take all action necessary or appropriate to secure to this
5 state the benefits of said legislation. In carrying out the
6 purposes of this section, the chief is hereby authorized
7 to cooperate with the federal water pollution control ad-
8 ministration of the United States department of interior,
9 other agencies of the federal government, other states,
10 interstate agencies and other interested parties in all
11 matters relating to water pollution, including the develop-
12 ment of programs for controlling and reducing water
13 pollution and improving the sanitary conditions of the
14 waters of the state; to apply for and receive, on behalf of
15 this state, funds made available under the aforesaid feder-
16 al legislation on condition that all moneys received from
17 any federal agency as herein provided shall be paid into
18 the state treasury and shall be expended, under the direc-

19 tion of the chief, solely for purposes for which the grants
20 shall have been made; to approve projects for which
21 applications for loans or grants under the federal legis-
22 lation are made by any municipality (including any city,
23 town, district or other public body created by or pursuant
24 to the laws of this state and having jurisdiction over
25 the disposal of sewage, industrial wastes or other wastes)
26 or agency of this state or by any interstate agency; and to
27 participate through his authorized representatives in pro-
28 ceedings under the federal legislation to recommend mea-
29 sures for the abatement of water pollution originating in
30 this state. The governor is hereby authorized, in his dis-
31 cretion, to give consent on behalf of this state to requests
32 by the secretary of the United States department of in-
33 terior to the attorney general of the United States for the
34 bringing of actions for the abatement of such pollution.
35 Whenever a federal law requires the approval or recom-
36 mendation of a state agency or any political subdivision
37 of the state in any matter relating to the water resources
38 of the state, the director, subject to approval of the
39 Legislature, is hereby designated as the sole person to

40 give the approval or recommendation required by the
41 federal law, unless the federal law specifically requires
42 the approval or recommendation of some other state
43 agency or political subdivision of the state.

§20-5A-5. Prohibitions; permits required.

1 (a) It shall be unlawful for any person, unless he
2 holds a permit therefor from the department, which is
3 in full force and effect, to:

4 (1) Allow sewage, industrial wastes, or other wastes,
5 or the effluent therefrom, produced by or emanating from
6 any establishment to flow into the waters of this state;

7 (2) Make, cause or permit to be made any outlet, or
8 substantially enlarge or add to the load of any existing
9 outlet, for the discharge of sewage, industrial wastes, or
10 other wastes, or the effluent therefrom, into the waters
11 of this state;

12 (3) Acquire, construct, install, modify or operate a
13 disposal system or part thereof for the direct or indirect
14 discharge or deposit of treated or untreated sewage, in-
15 dustrial wastes, or other wastes, or the effluent therefrom,

16 into the waters of this state, or any extension to or addi-
17 tion to such disposal system;

18 (4) Increase in volume or concentration of any sew-
19 age, industrial wastes or other wastes in excess of the
20 discharges or disposition specified or permitted under
21 any existing permit;

22 (5) Extend, modify or add to any establishment, the
23 operation of which would cause an increase in the volume
24 or concentration of any sewage, industrial wastes or other
25 wastes discharging or flowing into the waters of the state;

26 (6) Open, reopen, operate or abandon any mine,
27 quarry or preparation plant, or dispose of any refuse or
28 industrial wastes or other wastes from any such mine or
29 quarry or preparation plant: *Provided*, That the depart-
30 ment's permit shall only be required wherever the afore-
31 mentioned activities cause, may cause or might reason-
32 ably be expected to cause a discharge into or pollution of
33 waters of the state; or

34 (7) Operate any disposal well for the injection or
35 reinjection underground of any industrial wastes, in-
36 cluding, but not limited to, liquids or gases, or convert

37 any well into such a disposal well or plug or abandon any
38 such disposal well.

39 (b) Where a person has a number of outlets emerging
40 into the waters of this state in close proximity to one
41 another, such outlets may be treated as a unit for the
42 purposes of this section, and only one permit issued for
43 all such outlets.

**§20-5A-6. Form of application for permit; information re-
quired; fees.**

1 The chief shall prescribe a form of application for all
2 permits for any activity specified in section five of this
3 article relating other than solely to sewage. The director
4 of the division of sanitary engineering of the state de-
5 partment of health, in cooperation with the chief, shall
6 prescribe a form of application for all permits for any
7 activity relating solely to sewage. All applications for
8 permits for any activity relating other than solely to
9 sewage shall be submitted to the chief of the division
10 of water resources, and those applications for permits for
11 any activity relating solely to sewage shall be submitted

12 to the division of sanitary engineering of the state de-
13 partment of health. All applications must be submitted on
14 a form as prescribed above. An applicant shall furnish
15 all information reasonably required by any such form,
16 including without limiting the generality of the fore-
17 going, a plan of maintenance and proposed method of
18 operation of the activity or activities. Notwithstanding
19 anything in this article to the contrary, where the activity
20 is an integral part of a secret operating process, the re-
21 quired information shall be limited solely to data which
22 will show the kind, characteristics, amount and rate of
23 flow of sewage, industrial wastes, or other wastes, or the
24 effluent therefrom, into the waters of the state. Until all
25 such required information is furnished, an application
26 shall not be considered a complete application.

27 A filing fee of ten dollars shall accompany the applica-
28 tion when filed with the division of water resources.
29 The filing fee shall be deposited in the state treasury to
30 the credit of the state general fund. The filing fee shall not
31 be returned to the applicant.

**§20-5A-7. Procedure concerning permits required under
article; transfer of permits.**

1 (a) The director of the division of sanitary engineering
2 shall promptly make his determination concerning the
3 health aspects of any proposed activity relating solely to
4 sewage. If the plans and specifications of the proposed
5 activity are in accord with all reasonable requirements
6 of the department of health, the director of the division
7 of sanitary engineering shall approve the application and
8 issue the department of health's certificate or permit
9 therefor. If the application is approved, the director of
10 the division of sanitary engineering shall promptly for-
11 ward his department's certificate or permit, together with
12 the application and the information and data submitted
13 therewith, to the division of water resources for the
14 action of the chief thereof. Any denial of the application
15 by the director of the division of sanitary engineering
16 shall be governed by the provisions of chapter sixteen
17 of this code and not by the provisions of this article.

18 (b) The chief or his duly authorized representatives
19 shall conduct such investigation as is deemed necessary

20 and proper in order to determine whether any such ap-
21 plication should be granted or denied. In making such in-
22 vestigation and determination as to any application per-
23 taining to any activity specified in subdivision (7) of
24 subsection (a) of section five of this article, the chief
25 shall consult with the director of the state geological and
26 economic survey and appropriate officials of the state de-
27 partment of health, and all such persons shall cooperate
28 with the chief and assist him in carrying out the duties
29 and responsibilities imposed upon him under the provi-
30 sions of this article and the rules and regulations of
31 the board; such cooperation shall include, but not be
32 limited to, a written recommendation approving or dis-
33 approving the granting of the permit and the reason or
34 reasons for such recommendation.

35 (c) The department's permit shall be issued upon such
36 reasonable terms and conditions as the chief may direct
37 if (1) the certificate or permit of the department of
38 health was issued (in those cases where the director of
39 the division of sanitary engineering was required to act
40 as required in subsection (a) hereof); and (2) the appli-

41 cation, together with all supporting information and data
42 and other evidence, establishes that any and all dis-
43 charges, or releases, escapes, deposits, disposition of
44 treated or untreated sewage, industrial wastes, or other
45 wastes, or the effluent therefrom, resulting from the ac-
46 tivity or activities for which the application for a permit
47 was made will not cause pollution of the waters of this
48 state or violate any rules and regulations of the board:
49 *Provided*, That the chief may issue a permit wherever in
50 his judgment the water quality standards of the state may
51 be best protected by the institution of a program of phased
52 pollution abatement which under the terms of the permit
53 may temporarily allow a limited degree of pollution of the
54 waters of the state; and (3) in cases wherein it is re-
55 quired such applicant shall include the name and address
56 of the responsible agent as set forth in section eight-b
57 of this article.

58 (d) An application for a permit incident to remedial
59 action in accordance with the provisions of section eleven
60 of this article shall be processed and decided as any other

61 application for a permit required under the provisions of
62 section five of this article.

63 (e) An application for any permit shall be acted upon
64 by the chief, and the department's permit delivered or
65 mailed, or a copy of any order of the chief denying any
66 such application delivered or mailed to the applicant by
67 the chief within forty-five days after the date upon which
68 such application was received from the applicant by the
69 division of sanitary engineering where the application
70 relates solely to sewage or within thirty days after the
71 date upon which such application was received from the
72 applicant by the division of water resources in all other
73 cases.

74 (f) When it is established that an application for a per-
75 mit should be denied, the chief shall make and enter
76 an order to that effect, which order shall specify the
77 reasons for such denial, and shall cause a copy of such
78 order to be served on the applicant by registered or certi-
79 fied mail. The chief shall also cause a notice to be served
80 with the copy of such order, which notice shall advise
81 the applicant of his right to appeal to the board by filing

82 a notice of appeal, on the form prescribed by the board
83 for such purpose, with the board, in accordance with the
84 provisions of section fifteen of this article, within thirty
85 days after the date upon which the applicant received
86 the copy of such order. However, an applicant may alter
87 the plans and specifications for the proposed activity and
88 submit a new application for any such permit, in which
89 event the procedure hereinbefore outlined with respect
90 to an original application shall apply.

91 (g) Upon the sale of property which includes an
92 activity for which the department's permit was granted,
93 the permit shall be transferable to the new owner, but
94 the transfer shall not become effective until the provi-
95 sions of section eight-b of this article are fully complied
96 with, and until such transfer is made in the records of
97 the division of water resources.

**§20-5A-8. Inspections; orders to compel compliance with per-
mits; service of orders; prior permits.**

1 After issuance of the department's permit for any
2 activity, the chief or his duly authorized representatives
3 may make field inspections of the work on the activity,

4 and, after completion thereof, may inspect the completed
5 activity, and, from time to time, may inspect the main-
6 tenance and operation of the activity.

7 To compel compliance with the terms and conditions
8 of the department's permit for any activity, the chief is
9 hereby authorized, after at least twenty days notice, to
10 make and enter an order revoking or suspending such
11 permit.

12 The chief shall cause a copy of any such order to be
13 served by registered or certified mail or by a conservation
14 officer or other law enforcement officer upon the person
15 to whom any such permit was issued. The chief shall
16 also cause a notice to be served with the copy of such
17 order, which notice shall advise such person of his right
18 to appeal to the board by filing a notice of appeal on
19 the form prescribed by the board for such purpose, with
20 the board, in accordance with the provisions of section
21 fifteen of this article, within thirty days after the date
22 upon which such person received the copy of such order.

23 All permits for the discharge of sewage, industrial
24 wastes or other wastes into any waters of the state issued

25 by the water resources board prior to July one, one thou-
26 sand nine hundred sixty-four and which have not been
27 revoked prior to the effective date of this article shall
28 be enforced under the terms and provisions of this
29 article, and shall remain valid unless and until revoked
30 or suspended in accordance with the terms and provisions
31 of this article or in accordance with the terms and pro-
32 visions of any rules or regulations promulgated there-
33 under.

§20-5A-8b. Responsible agent; duties, notification of change.

1 It shall be the duty of every operator of a well, from
2 and after the effective date of this article, in cases wherein
3 such well operator is the holder of a permit issued pur-
4 suant to the provisions of this article to designate an
5 individual who is a resident of this state as a responsible
6 agent for such well. The responsible agent shall be the
7 attorney in fact for and in behalf of the operator, and
8 upon whom notices, orders or other communications
9 issued pursuant to this article may be served, and upon
10 whom process may be served. In cases wherein there
11 is a responsible agent designated under the provisions

12 of section one-k, article four, chapter twenty-two of this
13 code, such responsible agent shall be deemed to be the
14 responsible agent required by this section, and shall be
15 so appointed by the operator. Every well operator so
16 appointing an agent, shall within five days after the
17 termination of such appointment, notify the department
18 of such termination, and designate a new responsible
19 agent.

§20-5A-9. Information to be filed by certain persons with division of water resources.

1 Any and all persons directly or indirectly discharging
2 or depositing treated or untreated sewage, industrial
3 wastes, or other wastes, or the effluent therefrom, into or
4 near any waters of the state shall file with the division
5 of water resources such information as the chief thereof
6 may reasonably require on forms prescribed by him for
7 such purpose, including but not limited to, data as to the
8 kind, characteristics, amount and rate of flow of such
9 discharge or deposit. If the chief has reasonable cause
10 to believe that any establishment is, or may be, polluting
11 the waters of the state, he may require any person

12 owning, operating or maintaining such establishment to
13 furnish such information as may reasonably be required
14 to ascertain whether such establishment is, or may be
15 causing such pollution, and he may conduct any test or
16 tests that he may deem necessary or useful in making
17 his investigation and determination.

**§20-5A-10. Orders of chief to stop or prevent discharges or
deposits or take remedial action; service of
orders.**

1 If the chief, on the basis of investigations, inspections
2 and inquiries, determines that any person who does not
3 have a valid permit issued pursuant to the provisions of
4 this article is causing the pollution of any of the waters
5 of the state, or does on occasions cause pollution or is
6 violating any rule or regulation of the board, he shall,
7 with the consent of the director, either make and enter
8 an order directing such person to stop such pollution or
9 the violation of the rule or regulation of the board, or
10 make and enter an order directing such person to take
11 corrective or remedial action. Such order shall also direct
12 such person to apply forthwith for a permit in accordance

13 with the provisions of sections five, six and seven of this
14 article. The chief shall fix a time limit for the completion
15 of such action. Whether the chief shall make and enter
16 an order to stop such pollution or shall make and enter an
17 order to take remedial action, in either case the person
18 so ordered may elect to cease operations of the establish-
19 ment deemed to be the source of such discharge or de-
20 posits causing pollution, if the pollution referred to in
21 the chief's order shall be stopped thereby.

22 In the sole discretion of the chief, he may postpone
23 issuing any such order if he feels such pollution can best
24 be controlled or reduced by cooperative efforts with the
25 person or persons responsible therefor.

26 The chief shall cause a copy of any such order to be
27 served by registered or certified mail or by a conservation
28 officer or other law enforcement officer upon such person.
29 The chief shall also cause a notice to be served with the
30 copy of such order, which notice shall advise such person
31 of his right to appeal to the board by filing a notice of
32 appeal, on the form prescribed by the board for such

33 purpose, with the board, in accordance with the provi-
34 sions of section fifteen of this article.

§20-5A-11. Compliance with orders of the chief.

1 Any person upon whom any order of the chief or any
2 order of the board in accordance with the provisions of
3 sections ten and fifteen of this article, has been served
4 shall fully comply therewith.

5 When such person is ordered to take remedial action
6 and does not elect to cease operation of the establishment
7 deemed to be the source of such pollution, or when such
8 ceasing does not stop the pollution, he shall forthwith
9 apply for a permit under and in accordance with the
10 provisions of sections five, six and seven of this article.
11 No such remedial action shall be taken until a permit
12 therefor has been issued; however, receipt of a permit
13 shall not in and of itself constitute remedial action.

**§20-5A-11a. Power of eminent domain; procedures; legislative
finding.**

1 (a) When any person who is owner of an establish-
2 ment is ordered by the chief to stop or prevent pollution
3 or the violation of the rules and regulations of the board

4 or to take corrective or remedial action, compliance with
5 which order will require the acquisition, construction
6 or installation of a new treatment works or the extension
7 or modification of or an addition to an existing treatment
8 works, (which acquisition, construction, installation, ex-
9 tension, modification or addition of or to a treatment
10 works pursuant to such order is referred to in this section
11 as "such compliance") such person may exercise the
12 power of eminent domain in the manner provided in
13 chapter fifty-four of this code, to acquire such real
14 property or interests in real property as may be deter-
15 mined by the chief to be reasonably necessary for such
16 compliance.

17 (b) Upon application by such person and after twenty
18 days written notice to all persons whose property may
19 be affected, the chief shall make and enter an order
20 determining the specific real property or interests in
21 real property, if any, which are reasonably necessary
22 for such compliance. In any proceeding under this sec-
23 tion, the person seeking to exercise the right of eminent
24 domain herein conferred shall establish the need for the

25 amount of land sought to be condemned and that such
26 land is reasonably necessary for the most practical method
27 for such compliance.

28 (c) The right of eminent domain herein conferred shall
29 not apply to the taking of any dwelling house or for the
30 taking of any land within five hundred feet of any such
31 dwelling house.

32 (d) The Legislature hereby declares and finds that
33 the taking and use of real property and interests in real
34 property determined to be reasonably necessary for such
35 compliance promotes the health, safety and general wel-
36 fare of the citizens of this state by reducing and abating
37 pollution in the waters of this state in which the public
38 at large has an interest and otherwise; that such taking
39 and use are necessary to provide and protect a safe, pure
40 and adequate water supply to the municipalities and
41 citizens of the state; that because of topography, pat-
42 terns of land development and ownership and other
43 factors it is impossible in many cases to effect such com-
44 pliance without the exercise of the power of eminent
45 domain and that the use of real property or interests in

46 real property to effect such compliance is a public use

47 for which private property may be taken or destroyed.

§20-5A-12. Duty to proceed with remedial action promptly

upon receipt of permit; progress reports re-

quired; finances and funds.

1 When such person is ordered to take remedial action

2 and does not elect to cease operation of the establish-

3 ment deemed to be the source of such pollution or when

4 ceasing does not stop the pollution, such person shall

5 immediately take or begin appropriate steps or pro-

6 ceedings to carry out such remedial action. In any such

7 case it shall be the duty of each individual offender, each

8 member of a partnership, each member of the governing

9 body of a municipal corporation and each member of

10 the board of directors or other governing body of a pri-

11 vate corporation, association or other legal entity what-

12 ever, to see that appropriate steps or proceedings to

13 comply with such order are taken or begun immediately.

14 The chief may require progress reports, at such time in-

15 tervals as he deems necessary, setting forth the steps

16 taken, the proceedings started and the progress made to-

17 ward completion of such remedial action. All such re-
18 medial action shall be diligently prosecuted to comple-
19 tion.

20 Failure of the governing body of a municipal corpora-
21 tion, or the board of directors or other governing body
22 of any private corporation, association or other legal en-
23 tity whatever, to provide immediately for the financing
24 and carrying out of such remedial action, as may be
25 necessary to comply with said order, shall constitute
26 failure to take or begin appropriate steps or proceedings
27 to comply with such order. If such person be a municipal
28 corporation, the cost of all such remedial action as may
29 be necessary to comply with said order shall be paid out
30 of funds on hand available for such purpose, or out of the
31 general funds of such municipal corporation, not other-
32 wise appropriated, and if there be not sufficient funds on
33 hand or unappropriated, then the necessary funds shall be
34 raised by the issuance of bonds, any direct general obliga-
35 tion bond issue to be subject to the approval of the state
36 sinking fund commission and the attorney general of the
37 state of West Virginia.

38 If the estimated cost of the remedial action to be taken
39 by a municipal corporation to comply with such order is
40 such that any bond issue necessary to finance such action
41 would not raise the total outstanding bonded indebted-
42 ness of such municipal corporation in excess of the con-
43 stitutional limit imposed upon such indebtedness by the
44 constitution of this state, then and in that event the
45 necessary bonds may be issued as a direct obligation of
46 such municipal corporation, and retired by a general
47 tax levy to be levied against all property within the limit
48 of such municipal corporation listed and assessed for
49 taxation. If the amount of such bonds necessary to be
50 issued would raise the total outstanding bonded indebted-
51 ness of such municipal corporation above said constitu-
52 tional limitation on such indebtedness, or if such muni-
53 cipal corporation by its governing body shall decide
54 against the issuance of direct obligation bonds, then such
55 municipal corporation shall issue revenue bonds and pro-
56 vide for the retirement thereof in the same manner and
57 subject to the same conditions as provided for the issuance
58 and retirement of bonds in chapter twenty-five, acts of

59 the legislature, first extraordinary session, one thousand
60 nine hundred thirty-three, and any amendment thereof:
61 *Provided*, That the provisions of section six of the above-
62 mentioned act, allowing objections to be filed with the
63 governing body, and providing that a written protest of
64 thirty percent or more of the owners of real estate shall
65 require a four-fifths vote of the governing body for the
66 issuance of said revenue bonds, shall not apply to bond
67 issues proposed by any municipal corporation to comply
68 with an order made and entered under the authority of
69 this article, and such objections and submission of written
70 protest shall not be authorized, nor shall the same, if
71 made or had, operate to justify or excuse failure to com-
72 ply with such order.

73 The funds made available by the issuance of either
74 direct obligation bonds or revenue bonds, as herein pro-
75 vided, shall constitute a "sanitary fund," and shall be
76 used for no other purpose than for carrying out such
77 order; no public money so raised shall be expended by
78 any municipal corporation for any purpose enumerated
79 in this article, unless such expenditure and the amount

80 thereof have been approved by the chief. The acquisition,
81 construction or installation, use and operation, repair,
82 modification, alteration, extension, equipment, custody
83 and maintenance of any disposal system by any municipi-
84 pal corporation, as herein provided, and the rights,
85 powers and duties with respect thereto, of such municipal
86 corporation and the respective officers and departments
87 thereof, whether the same shall be financed by the is-
88 suance of revenue or direct obligation bonds, shall be
89 governed by the provisions of said chapter twenty-five,
90 acts of the Legislature, first extraordinary session, one
91 thousand nine hundred thirty-three, and any amend-
92 ments thereof.

§20-5A-12a. Emergency orders.

1 Whenever the chief finds that any discharge, release,
2 escape, deposit or disposition of treated or untreated sew-
3 age, industrial wastes or other wastes into any waters
4 within this state, when considered alone or in conjunction
5 with other discharges, releases, escapes, deposits or dispo-
6 sitions, constitutes a clear, present and immediate danger
7 to the health of the public, or to the fitness of a private

8 or public water supply for drinking purposes, the chief
9 may, with the concurrence in writing of the director of the
10 department of natural resources and the director of the de-
11 partment of health, without notice or hearing, issue an
12 order or orders requiring the immediate cessation or
13 abatement of any such discharge, release, escape, deposit
14 or disposition, and the cessation of any drilling, redrilling,
15 deepening, casing, fracturing, pressuring, operating, plug-
16 ging, abandoning, converting or combining of any well,
17 or requiring such other action to be taken as the chief,
18 with the concurrences aforesaid, deems necessary to abate
19 such danger.

20 Notwithstanding the provisions of any other section of
21 this article, any order issued under the provisions of this
22 section shall be effective immediately and may be served
23 in the same manner as a notice may be served under the
24 provisions of section two, article seven, chapter twenty-
25 nine-a of the code. Any person to whom such order is
26 directed shall comply therewith immediately, but on
27 notice of appeal to the board shall be afforded a hearing
28 as promptly as possible, and not later than ten days after

29 the board receives such notice of appeal. On the basis of
30 such hearing, and within five days thereafter, the board
31 shall make and enter an order continuing the order of the
32 chief in effect, revoking it, or modifying it. For the pur-
33 pose of such appeal and judicial review of the order
34 entered following an appeal hearing, all pertinent pro-
35 visions of sections fifteen and sixteen of this article shall
36 govern.

§20-5A-13. Time extensions.

1 The chief shall have the authority, in his sole discretion,
2 to extend the time fixed in any order made and entered
3 by him, or the board in accordance with the provisions
4 of section fifteen of this article, within which any person
5 ordered to take remedial action who does not elect to
6 cease the operation of the establishment deemed to be
7 the source of said pollution, must complete such action,
8 upon written petition filed with him prior to the time
9 fixed in such order, when it shall appear that a good
10 faith effort to comply with said order is being made, and
11 that it shall be impossible for such person to complete
12 such remedial action within the time so fixed. When it

13 shall appear from such petition that due to wartime or
14 other governmental restrictions with respect to labor
15 or material, or both, such compliance with any such order
16 would be impossible or would place an undue burden
17 upon such person, the chief shall stay execution of any
18 such order until such time as it may satisfactorily appear
19 that such wartime or other restrictions no longer exist.
20 The chief may grant as many such extensions as he finds
21 to be warranted by the facts and circumstances involved
22 in any particular case.

§20-5A-14. Control by state as to pollution; continuing jurisdiction.

1 No right to violate the rules and regulations of the
2 board or to continue existing pollution of any of the
3 waters of the state shall exist nor shall such right be or
4 be deemed to have been acquired by virtue of past or
5 future pollution by any person. The right and control of
6 the state in and over the quality of all waters of the state
7 are hereby expressly reserved and reaffirmed. It is recog-
8 nized that with the passage of time, additional efforts
9 may have to be made by all persons toward control and

10 reduction of the pollution of the waters of the state,
11 irrespective of the fact that such persons may have pre-
12 viously complied with all orders of the chief or board. It
13 is also recognized that there should be continuity and
14 stability respecting pollution control measures taken in
15 cooperation with, and with the approval of, the chief, or
16 pursuant to orders of the chief or board. When a person
17 is complying with the terms and conditions of a permit
18 granted pursuant to the provisions of section seven of
19 this article or when a person has completed remedial
20 action pursuant to an order of the chief or board, addi-
21 tional efforts may be required wherever and whenever
22 the rules and regulations of the board are violated or the
23 waters of the state are polluted by such person.

§20-5A-15. Appeal to water resources board.

1 (a) Any person adversely affected by an order made
2 and entered by the chief in accordance with the provi-
3 sions of this article, or aggrieved by failure or refusal of
4 the chief to act within the time required by section seven
5 of this article on an application for a permit or aggrieved
6 by the terms and conditions of a permit granted under the

7 provisions of this article, may appeal to the water re-
8 sources board for an order vacating or modifying such
9 order, or for such order, action or terms and conditions
10 as the chief should have entered, taken or imposed.
11 The person so appealing shall be known as the appellant
12 and the chief shall be known as the appellee. If the chief
13 denies a permit because of any disapproval of a permit
14 application by one or more of the public officers re-
15 quired to review such application under the provisions of
16 subsection (b), section seven of this article, such public
17 officers shall be joined as a coappellee or coappellees with
18 the chief in such appeal.

19 (b) Such appeal shall be perfected by filing a notice
20 of appeal, on the form prescribed by the board for such
21 purpose, with the board within thirty days after date
22 upon which the appellant received the copy of such order
23 or received such permit, as the case may be. The filing of
24 the notice of appeal shall not stay or suspend the execu-
25 tion of the order appealed from. If it appears to the direc-
26 tor or the board that an unjust hardship to the appellant
27 will result from the execution of the chief's order pending

28 determination of the appeal, the director or the board may
29 grant a suspension of such order and fix its terms. The
30 notice of appeal shall set forth the order or terms and
31 conditions complained of and the grounds upon which
32 the appeal is based. A copy of the notice of appeal shall
33 be filed by the board with the chief within three days
34 after the notice of appeal is filed with the board.

35 (c) Within seven days after receipt of his copy of
36 the notice of appeal, the chief shall prepare and certify
37 to the board a complete record of the proceedings out of
38 which the appeal arises including all documents and
39 correspondence in the chief's file relating to the matter
40 in question. With the consent of the board and upon such
41 terms and conditions as the board may prescribe, any
42 persons affected by any such activity or by such alleged
43 pollution may by petition intervene as a party appellant
44 or appellee. The board shall hear the appeal de novo, and
45 evidence may be offered on behalf of the appellant and
46 appellee, and, with the consent of the board, by any in-
47 tervenors.

48 (d) All of the pertinent provisions of article five, chap-
49 ter twenty-nine-a of this code shall apply to and govern

50 the hearing on appeal authorized by this section and the
51 administrative procedures in connection with and follow-
52 ing such hearing, with like effect as if the provisions of
53 said article five were set forth in extenso in this section,
54 with the following modifications or exceptions:

55 (1) Unless the board directs otherwise, the appeal hear-
56 ing shall be held in the city of Charleston, Kanawha
57 county, West Virginia; and

58 (2) In accordance with the provisions of section one,
59 article five of said chapter twenty-nine-a, all of the testi-
60 mony at any such hearing shall be recorded by steno-
61 graphic notes and characters or by mechanical means.
62 Such reported testimony shall in every appeal hearing
63 under this article be transcribed.

64 (e) Any such appeal hearing shall be conducted by a
65 quorum of the board, but the parties may by stipula-
66 tion agree to take evidence before a hearing examiner
67 employed by the board. For the purpose of conducting
68 such appeal hearing, any member of the board and the
69 secretary thereof shall have the power and authority
70 to issue subpoenas and subpoenas duces tecum in the

71 name of the board, in accordance with the provisions of
72 section one, article five, chapter twenty-nine-a of this
73 code. All subpoenas and subpoenas duces tecum shall be
74 issued and served within the time and for the fees and
75 shall be enforced, as specified in section one, article five
76 of said chapter twenty-nine-a, and all of the said section
77 one provisions dealing with subpoenas and subpoenas
78 duces tecum shall apply to subpoenas and subpoenas
79 duces tecum issued for the purpose of an appeal hearing
80 hereunder.

81 (f) Any such hearing shall be held within twenty days
82 after the date upon which the board received the timely
83 notice of appeal, unless there is a postponement or con-
84 tinuance. The board may postpone or continue any hear-
85 ing upon its own motion, or upon application of the ap-
86 pellant, the appellee or any intervenors for good cause
87 shown. The chief shall be represented at any such hearing
88 by the attorney general or his assistants. At any such
89 hearing the appellant and any intervenor may represent
90 himself or be represented by an attorney at law admitted
91 to practice before any circuit court of this state.

Handwritten signature or initials in black ink, appearing to be 'JPM' or similar, located to the right of the text on line 87.

92 (g) After such hearing and consideration of all of the
93 testimony, evidence and record in the case, the board
94 shall make and enter an order affirming, modifying or
95 vacating the order of the chief, or shall make and enter
96 such order as the chief should have entered, or shall make
97 and enter an order approving or modifying the terms and
98 conditions of any permit issued. In determining its
99 course of action, the board shall take into consideration
100 not only the factors which the chief was authorized to
101 consider in making his order and in fixing the terms and
102 conditions of any permit, but also the economic feasi-
103 bility of treating and/or controlling the sewage, in-
104 dustrial wastes or other wastes involved.

105 (h) Such order shall be accompanied by findings of
106 fact and conclusions of law as specified in section three,
107 article five, chapter twenty-nine-a of this code, and a
108 copy of such order and accompanying findings and con-
109 clusions shall be served upon the appellant, and any inter-
110 venors, and their attorneys of record, if any, and upon
111 the appellee in person or by registered or certified mail.

112 (i) The board shall also cause a notice to be served

113 with the copy of such order, which notice shall advise
114 the appellant, the appellee and any intervenors of their
115 right to judicial review, in accordance with the provi-
116 sions of section sixteen of this article. The order of the
117 board shall be final unless vacated or modified upon
118 judicial review thereof in accordance with the provisions
119 of section sixteen of this article.

§20-5A-16. Judicial review.

1 (a) Any person or the chief adversely affected by
2 an order made and entered by the board after such
3 appeal hearing, held in accordance with the provisions
4 of section fifteen of this article, is entitled to judicial
5 review thereof. All of the pertinent provisions of section
6 four, article five, chapter twenty-nine-a of this code shall
7 apply to and govern such review with like effect as if
8 the provisions of said section four were set forth in
9 extenso in this section, with the following modifications
10 or exceptions:

11 (1) As to cases involving an order denying an appli-
12 cation for a permit, or approving or modifying the terms
13 and conditions of a permit, the petition shall be filed,

14 within the time specified in said section four, in the
15 circuit court of Kanawha county;

16 (2) As to cases involving an order revoking or sus-
17 pending a permit, the petition shall be filed, within the
18 time specified in said section four, in the circuit court
19 of Kanawha county; and

20 (3) As to cases involving an order directing that any
21 and all discharges or deposits of sewage, industrial wastes,
22 or other wastes, or the effluent therefrom, determined
23 to be causing pollution be stopped or prevented or else
24 that remedial action be taken, the petition shall be filed,
25 within the time specified in said section four, in the
26 circuit court of the county in which the establishment is
27 located or in which the pollution occurs.

28 (b) The judgment of the circuit court shall be final un-
29 less reversed, vacated or modified on appeal to the su-
30 preme court of appeals, in accordance with the provisions
31 of section one, article six, chapter twenty-nine-a of
32 this code, except that notwithstanding the provisions of
33 said section one the petition seeking such review must be
34 filed with said supreme court of appeals within ninety

35 days from the date of entry of the judgment of the circuit
36 court.

37 (c) Legal counsel and services for the chief in all appeal
38 proceedings in the circuit court and in the supreme court
39 of appeals of this state shall be provided by the attorney
40 general or his assistants and in appeal proceedings in the
41 circuit court by the prosecuting attorney of the county
42 in which the appeal is taken, all without additional com-
43 pensation.

§20-5A-17. Injunctive relief.

1 Upon application by the chief, the circuit courts of this
2 state or the judges thereof in vacation may by injunction
3 compel compliance with and enjoin violations of the pro-
4 visions of this article, the rules and regulations of the
5 board, the terms and conditions of any permit granted
6 under the provisions of this article, or any order of the
7 chief or board, and the venue of any such action shall
8 be the county in which the violation or noncompliance
9 exists or is taking place or in any county in which the
10 waters thereof are polluted as the result of such violation
11 or noncompliance. The court or the judge thereof in

12 vacation may issue a preliminary injunction in any case
13 pending a decision on the merits of any application filed.
14 Any other section of this code to the contrary notwith-
15 standing, the state shall not be required to furnish bond as
16 a prerequisite to obtaining injunctive relief under this
17 article.

18 An application for an injunction under the provisions
19 of this section may be filed and injunctive relief granted
20 notwithstanding that all of the administrative remedies
21 provided for in this article have not been pursued or in-
22 voked against the person or persons against whom such
23 relief is sought and notwithstanding that the person or
24 persons against whom such relief is sought have not been
25 prosecuted or convicted under the provisions of this
26 article.

27 The judgment of the circuit court upon any application
28 filed under the provisions of this article shall be final
29 unless reversed, vacated or modified on appeal to the
30 supreme court of appeals. Any such appeal shall be
31 sought in the manner provided by law for appeals from
32 circuit courts in other civil cases, except that the petition

33 seeking such review must be filed with said supreme
34 court of appeals within ninety days from the date of
35 entry of the judgment of the circuit court.

36 Legal counsel and services for the chief or the board
37 in all injunction proceedings in the circuit courts and in
38 the supreme court of appeals of this state shall be pro-
39 vided by the attorney general or his assistants and by the
40 prosecuting attorneys of the several counties as well; all
41 without additional compensation, or the chief or the
42 board, with the written approval of the attorney general,
43 may employ counsel to represent him or it in a particular
44 proceeding.

§20-5A-19. Violations; criminal penalties.

1 Any person who causes pollution or who fails or refuses
2 to discharge any duty imposed upon him by this article
3 or by any rule or regulation of the board, promulgated
4 pursuant to the provisions and intent of this article, or
5 by any order of the chief or board, or who fails or refuses
6 to apply for and obtain a permit as required by the pro-
7 visions of this article, or who fails or refuses to comply
8 with any term or condition of such permit, shall be

9 guilty of a misdemeanor, and, upon conviction thereof,
10 shall be punished by a fine of not less than one hundred
11 dollars nor more than one thousand dollars, or by im-
12 prisonment for a period not exceeding six months, or by
13 both such fine or imprisonment. Any person who wilfully
14 violates any provision of this article, or any rule or regu-
15 lation of the board, or any order of the chief or board,
16 or any term or condition of a permit, shall be guilty
17 of a misdemeanor, and, upon conviction thereof, shall be
18 punished by a fine of not less than one thousand nor more
19 than ten thousand dollars or by imprisonment not exceed-
20 ing six months or by both such fine and imprisonment.
21 Each day upon which such failure continues shall consti-
22 tute a separate offense.

23 Any person who fails or refuses to discharge any duty
24 imposed upon him by this article, or by any rule or
25 regulation of the board, or by an order of the chief or
26 board, or who fails or refuses to apply for and obtain a
27 permit as required by the provisions of this article, or by
28 any rule or regulation of the board or who fails or
29 refuses to comply with any term or condition of such

30 permit, may be prosecuted and convicted under the pro-
31 visions of this section notwithstanding that none of the
32 administrative remedies provided for in this article have
33 been pursued or invoked against said person and not-
34 withstanding that an application for an injunction under
35 the provisions of this article has not been filed against
36 such person.

37 Where a person holding a permit is carrying out a pro-
38 gram of pollution abatement or remedial action in com-
39 pliance with the conditions and terms of such permit, he
40 shall not be subject to criminal prosecution for pollution
41 recognized and authorized by such permit.

**§20-5A-22. Existing rights and remedies preserved; article for
benefit of state only.**

1 It is the purpose of this article to provide additional
2 and cumulative remedies to abate the pollution of the
3 waters of the state and nothing herein contained shall
4 abridge or alter rights of action or remedies now or here-
5 after existing, nor shall any provisions in this article, or
6 any act done by virtue of this article, be construed as
7 estopping the state, municipalities, public health offi-

8 cers, or persons as riparian owners or otherwise, in
9 the exercise of their rights to suppress nuisances or to
10 abate any pollution now or hereafter existing, or to re-
11 cover damages.

12 The provisions of this article inure solely to and are
13 for the benefit of the people generally of the state of West
13 Virginia, and this article is not intended to in any way
14 create new, or enlarge existing rights of riparian owners
15 or others. An order of the chief or of the board, the
16 effect of which is to find that pollution exists, or that
17 any person is causing pollution, or any other order, or
18 any violation of any of the provisions of this article
19 shall give rise to no presumptions of law or findings of
20 fact inuring to or for the benefit of persons other than
21 the state of West Virginia.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompau

Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1969.

J. Howard Keyes
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

L. G. Johnson
President of the Senate

Tom F. Beasley
Speaker House of Delegates

The within *approved* this the *12th*
day of *March*, 1969.

Arch A. Moore Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/8/69

Time 4:50 p.m.

~~RECEIVED~~

MAR 17 10 23 AM '69

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA